

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition No.: 34-006-16-1-5-00112-17
Petitioner: Joni Novak
Respondent: Howard County Assessor
Parcel No.: 34-09-23-253-010.000-006
Assessment Year: 2016

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. Petitioner initiated her appeal for 2016 with the Howard County Property Tax Assessment Board of Appeals (“PTABOA”). On November 30, 2016, the PTABOA issued its final determination. Petitioner then filed her Form 131 petition on January 17, 2017.
2. Petitioner elected to have her appeal heard under the Board’s small claims procedures. Respondent did not elect to have the appeal removed from those procedures.
3. On September 21, 2017, Dalene McMillen, the Board’s Administrative Law Judge (“ALJ”), held a hearing. Neither the Board nor the ALJ inspected the property.
4. Property owner Joni Novak was sworn and testified. Howard County Assessor Melinda Heady and James Morris of Ad Valorem Solutions, LLC were sworn and testified for Respondent:¹

Facts

5. The property under appeal consists of a 0.38 acre vacant lot located at 1724 Foxhaven Drive in Kokomo.
6. The assessed value of the land for 2016 is \$29,100.
7. Petitioner requested a value of \$20,000.

¹ Ryan Morris was present to observe the hearing.

Record

8. The official record for this matter is made up of the following:

a. A digital recording of the hearing,

b. Exhibits:

Petitioner Exhibit 1: Sales comparison analysis,

Respondent Exhibit R1: Summary of Respondent's exhibits,

Respondent Exhibit R2: 2015 sales comparison analysis,

Respondent Exhibit R3: Property Record Card ("PRC") for the subject property,

Respondent Exhibit R4: PRCs for 1614 Foxhaven Drive, 1745 Foxhaven Drive, 1545 Fox Cove Drive, 1541 Fox Cove Drive, 1533 Fox Cove Drive, 1525 Fox Cove Drive, and 2132 Foxfire Lane,

Respondent Exhibit R5: Aerial map identifying location of 2015 comparable sales,

Respondent Exhibit R6: Department of Local Government Finance ("DLGF") 2016 Ratio Study Guidance memorandum, dated January 4, 2016,

Respondent Exhibit R7: 2016 sales comparison analysis,

Respondent Exhibit R8: PRCs for 2105 Foxfire Lane, 2109 Foxfire Lane, 2113 Foxfire Lane, 1555 Foxhaven Drive, 1539 Foxhaven Drive, 1530 Fox Cove Drive, 1534 Fox Cove Drive, 2125 Foxfire Lane, 1540 Foxhaven Drive, 1542 Foxhaven Drive, 1529 Fox Cove Drive, 1617 Foxhaven Drive, 1728 Foxhaven Drive, and subject property,

Respondent Exhibit R9: Aerial map identifying location of 2016 comparable sales,

Board Exhibit A: Form 131 petition and attachments,

Board Exhibit B: Hearing notice,

Board Exhibit C: Hearing sign-in sheet,

c. These Findings and Conclusions.

Burden of Proof

9. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that his property's assessment is wrong and what its correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.

10. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
11. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15,” except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).
12. These provisions may not apply if there was a change in improvement, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
13. The parties agreed that the assessment did not increase by more than 5% between 2015 and 2016 and that Petitioner has the burden of proof.

Objection

14. Respondent objects to Petitioner’s use of the May 6, 2016, sale of the subject property to determine value because it occurred after the January 1, 2016, valuation date. The objection goes to the weight of the evidence rather than its admissibility and is therefore overruled.

Summary of the Parties’ Contentions

15. Petitioner’s case:
 - a. Petitioner purchased the property on May 6, 2016, for \$20,000. *Resp’t Ex. R3.*
 - b. Petitioner offered a comparative market analysis consisting of eight sales including the subject property. The lots ranged in size from 0.33 acres to 0.46 acres. The properties sold between December 8, 2011, and July 28, 2016. The sales prices ranged from \$9,000 to \$46,000, with an average sale price of

\$17,937.50.² Petitioner contends this analysis supports her claim that the 2016 assessed value is excessive. *Novak testimony; Pet'r Ex. 1.*

- c. Petitioner contends the county's land order originally valued the lots in the subject neighborhood at \$40,000, which was also the price the lots were selling for at the time. However, she contends that price may have included a golf membership or a discount. She also added that the original developer of the neighborhood eventually went bankrupt. *Novak testimony.*
 - d. In light of the above considerations, Petitioner requests a value of \$20,000 for 2016. *Novak testimony.*
16. Respondent's case:
- a. Mr. Morris explained that for the assessment process, the DLGF has developed guidelines outlining how to establish the market value-in-use for real property in Indiana. For the January 1, 2016, assessment date, assessing officials were to use sales of properties from January 1, 2015, to December 31, 2015. He also explained that older sales can be used, but must be time adjusted if appropriate in accordance with the 2007 International Association of Assessing Officers ("IAAO") Standard on Ratio Studies. *Morris testimony; Resp't Ex. R6.*
 - b. Mr. Morris presented a sales comparison analysis for 2015. He used seven comparable vacant land sales located in the subject neighborhood. He chose the properties based on similar lot sizes from 0.30 acres to 0.47 acres, with similar topography. He claims that some of the properties are adjacent to a golf course while others are adjacent to a woods. The properties sold between September 22, 2015, and December 1, 2015. The unadjusted sale prices ranged from \$22,000 to \$30,000 per lot.³ The size-adjusted sale prices ranged from \$19,905 to \$32,571 per lot, with an average value of \$27,405 and a median value of \$29,688. *Morris testimony; Resp't Exs. R2-R5.*
 - c. Mr. Morris also presented a sales comparison analysis for 2016. He used thirteen comparable vacant land sales located in the subject neighborhood. The comparable lot sizes ranged from 0.28 acres to 0.57 acres. The properties sold between February 9, 2016, and December 9, 2016. The unadjusted sale prices ranged from \$20,000 to \$29,000 per lot. The size-adjusted sale prices ranged from \$17,833 to \$39,357 per lot, with an average value of \$31,200 and a median value of \$32,484. *Morris testimony; Resp't Exs. R7-R9.*

² Ms. Novak stated that 1530 and 1534 Foxfire Lane were two separate lots that sold for one purchase price of \$46,000.

³ Mr. Morris testified that 1545, 1541 and 1533 Fox Cove Drive were three individual lots that sold for one purchase price of \$75,000 to Majestic Custom Homes of Lafayette. For his analysis he assigned each lot a price of \$25,000.

- d. Mr. Morris acknowledged that in 2015 and 2016 a majority of the vacant lots in the subject neighborhood were purchased by Majestic Custom Homes of Lafayette. He further stated that normally a developer purchasing a number of lots at one time pays a lower price per lot than an individual buying a single lot. *Morris testimony.*
- e. Respondent contends that in looking at the 2016 sales comparison analysis, the argument could be made for increasing the assessed value to \$31,200. However, he contends that since only 2015 sales should be used in determining the 2016 assessed value, the 2015 sales comparison analysis supports the assessed value of \$29,100. *Morris testimony.*

Analysis

- 17. Petitioner provided sufficient evidence to establish a prima facie case for reducing the 2016 assessment. The Board reached this decision for the following reasons:
 - a. Indiana assesses real property based on its true tax value, which does not mean fair market value, but rather the value determined under the Department of Local Government Finance's rules. The DLGF's 2011 Real Property Assessment Manual defines true tax value as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). Evidence in a tax appeal should be consistent with that standard. For example, a market value-in-use appraisal prepared according to USPAP often will be probative. *See id.; see also, Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sale or assessment information for the property under appeal or comparable properties, and any other information compiled according to generally recognized appraisal practices. *See Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *see also* Ind. Code § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use).
 - b. Regardless of the type of evidence offered, a party must explain how that evidence relates to the property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2016 assessments, the valuation date was January 1, 2016. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
 - c. Petitioner purchased the property for \$20,000 on May 6, 2016. The purchase price of a property is often the best evidence of a property's value. *Hubler Realty Co. v. Hendricks County Assessor*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010).

Here, the purchase date was approximately five months after the valuation date and the Board has generally determined that a sale occurring within one year of the valuation date is temporally sufficient to constitute probative evidence. Therefore, Petitioner has established a prima facie case that the 2016 assessment should be reduced.

- d. Once a petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach a petitioner's case, the respondent has the same burden to present probative evidence that the petitioner faced to raise its prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005).
- e. Respondent sought to impeach Petitioner's purchase price by offering two sales comparison analyses to support the 2016 assessment. To effectively use the sales-comparison approach as evidence in a property tax appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property are not sufficient. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- f. Initially, Respondent's two analyses do not appear to differ significantly from those that would be made by a certified appraiser in an appraisal report. However, Mr. Morris only accounted for the difference in size between the subject property and the purportedly comparable properties. He did not adequately explain or quantify any other relevant differences among the properties. Furthermore, Mr. Morris failed to certify that his two analyses conform to generally accepted appraisal principles and USPAP. Consequently, Respondent's analyses are not enough to rebut Petitioner's case.

Conclusion

18. Petitioner made a prima facie case for a reduction in the assessed value. Respondent failed to rebut Petitioner's case. As a result, the Board finds for Petitioner.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Board determines the 2016 assessed value should be changed to \$20,000.

ISSUED: November 8, 2017

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.